DOCKET NO. CVLND126035945	:	SUPERIOR COURT
GURPREET AHUJA	:	JUDICIAL DISTRICT OF HARTFORD
VS.	:	AT HARTFORD
ZONING BOARD OF THE CITY OF STAMFORD	: :	JANUARY 4, 2013

MEMORANDUM OF DECISION

I

The plaintiff, Gurpreet Ahuja (Ahuja), filed the present matter claiming that the defendant Zoning Board of the city of Stamford (Board) unlawfully granted the defendant Procurement, LLC (Procurement)'s application to develop certain property located at 11 Maplewood Place and 808, 812, 816, 820, and 826 High Ridge Road, Stamford, Connecticut. On July 28, 2011, Procurement filed an application, pursuant to Sections 9(E)(2), 9(E)(4), and 9(E)(8) of the Stamford Zoning Regulations, for a special exception in the RM-1 zone and an application for Final Site and Architectural Plan approval for the above properties to build a 28,300 square foot, two story building containing 10 residential units and a child day care center, and an approximately 12,000 square foot two and one-half story building containing 12 dwelling units.

The Board published notice in the Stamford Advocate on September 14, 2011 and September 21, 2011 for a public hearing to be held on September 26, 2011.

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Return of Record (ROR), 14; 25. The Board was unable to complete the hearing on that date and continued the hearing to October 6, 2011(ROR, 26-27). Due to the large number of citizens who still wished to speak that evening, the Board continued the hearing to October 24, 2011 (ROR, 32, p. 106); yet on that evening, the hearing was abruptly closed due to overcrowding. The Board indicated it would publish notice for the next hearing, and consequently, it caused notice to be published in the Stamford Advocate on October 28, 2011 and November 4 ,2011 for a public hearing on November 10, 2011. The hearing concluded that evening, and on December 12, 2011, the Board approved the applications, albeit with certain conditions. Notice of the decision was published in the Stamford Advocate on December 16, 2011. (ROR, 59; 60).

Ahuja claims that the Board's actions were unlawful for three reasons. The first (and presumably, the main argument) is that the Board failed to publish notices for the public hearings of October 6, 2011 and October 24, 2011 in accordance with town ordinances. The second is that the notice was misleading due to last minute changes in the application, and the third, and related argument, is that a new notice should have been published because the application was materially changed.

At the November 30, 2012 hearing, this court found from the testimony of land surveyor David Laferriere that Ahuja is statutorily aggrieved. General Statutes § 8-8a (1); 8-8 (b).

II

A.

Unlike most zoning commissions, Stamford operates under the city charter pursuant to a special act. "With the exception of certain provisions contained in chapters 124 and 126 of the General Statutes . . . planning and zoning in Stamford are governed by 26 Spec. Laws 1228, No. 619, hereinafter referred to as the Stamford Charter (1953), rather than by the General Statutes." *Sheridan* v. *Planning Board*, 159 Conn. 1, 4, 266 A.2d 396 (1969). Ahuja maintains that the Board failed to comply with the specific Stamford City Charter notice regulations, § C6-40-11 and § C6-40-12, as opposed to the notice requirements set forth in the General Statutes § 8-7d (a).[1] Section C6-40-11, entitled, "Notice of Public Hearings," states, "Notice of each public hearing held with respect to amendments of the Zoning Regulations and Map or applications for approval of site and architectural plans and/or requested uses shall be given by publishing in an official newspaper the time, place and purpose of such hearing. If any such hearing is to be held with respect to an amendment to the Zoning Map, such notice shall include a clear and accurate map

[1] General Statutes § 8-7d (a) states in relevant part, "Notice of the hearing shall be published in a newspaper having a general circulation in such municipality where the land that is the subject of the hearing is located at least twice, at intervals of not less than two days, the first not more than fifteen days or less than ten days and the last not less than two days before the date set for the hearing."

showing the bounds of any area or areas affected. Said notice shall be published at least twice, the first not more than fifteen nor less than ten days before such hearing, and the last not less than two days before such hearing; and a copy of such proposed amendment or a copy of such application for approval of site and architectural plans and/or requested uses shall be filed in the office of the Town and City Clerk at least ten days before such hearing." Section C6-40-12, entitled "Hearings," states, "If more than one public hearing is considered by the Zoning Board to be necessary or advisable, additional hearings may be held upon due notice, as herein above set forth, provided no more than ninety days shall elapse between the first and last hearing on any one petition, unless the petitioner agrees in writing to an extension of such period." As noted previously, notice was given for the September 26 and November 10 hearings. Ahuja argues that because Procurement or the Board failed to provide notice for the October 6 and October 26, 2011 hearings, the Board did not comply with the Charter. According to Ahuja, failure to provide notice precludes the Board from acting on a proposal; it lacked subject matter jurisdiction.

"Compliance with prescribed notice requirements is a prerequisite to a valid action by a zoning board of appeals and failure to give proper notice constitutes a jurisdictional defect." *Wright* v. *Zoning Board of Appeals*, 174 Conn. 488, 491, 391 A.2d 146 (1978). Ahuja's argument that the Board lacked jurisdiction because it failed to give notice for the October 6 and 26 hearings presupposes that the two dates,

indeed all four dates, were separate hearings and not merely the continuation of one hearing. In *Roncari Industries, Inc.* v. *Planning & Zoning Commission,* 281 Conn. 66, 73, 912 A.2d 1008 (2007), the court was faced with the exact same argument, and it stated, "[t]he plaintiff does not cite any authority supporting this claim, however, and we have not found any such authority. . . . Section 8-3 does not require the publication of additional notices when the public hearing is continued or rescheduled; the statute is silent with regard to notice when the hearing is postponed."[2] It went on to add that "[s]imilarly, nothing in the town's zoning regulations requires the publication of additional notices when a public hearing is rescheduled or continued." Id.[3] Stamford's charter provisions, §§ C6-40-11 and C6-40-12, set forth above, also do not state that any continuation date of a public hearing is a separate public hearing. Procurement cites Judge Adams' decision in *Carberry* v. *Zoning Board of Appeals*, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV 00 0176766 (Oct. 16, 2001, *Adams, J.*) (30 Conn. L. Rptr. 537), clarified by *Carberry* v. *Zoning Board of Appeals*, Superior

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[2] Plaintiff's reliance on *Cocivi* v. *Planning & Zoning Commission*, 20 Conn. App. 705, 570 A.2d 226, cert. denied, 214 Conn. 808, 573 A.2d 319 (1990), is not controlling as that matter involved a misleading notice, i.e., it gave the wrong date for the hearing.

[3] While the *Roncari* case refers to § 8-3 as opposed to § 8-7d, § 8-3 states in part that, "such hearing shall be held in accordance with the provisions of section 8-7d."

Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV 00 0176766 (Nov. 8, 2001, *Adams, J.*), in which this same issue was addressed. Judge Adams held that no additional notice was required as a second hearing "was not a new hearing on the application, but a continuance of the initial hearing . . . which was not completed and therefore recessed . . . ." Id., 541. He added, "Requiring new newspaper publication of notice for a hearing that is continued beyond the original date would place an undue burden on local boards and commissions which as a general practice meet during the evening hours of the work week. There are many conceivable and appropriate reasons for a zoning board of appeals not to complete a hearing on a matter in a single weekday evening. If each continuation of a hearing imposed the necessity of a new newspaper publication schedule, it would severely constrain the scheduling of new dates and slow down the process." Id. See also *S&L Realty, LLC* v. *Zoning Board of Appeals*, Superior Court, judicial district of Hartford, Docket No. CV 04 4001393 (June 6, 2006, *Keller, J.*) (zoning board had jurisdiction after published initial hearing was opened and continued to special hearing date); *Meskiewicz* v. *Planning & Zoning Commission*, Superior Court, judicial district of New Britain, Docket No. CV 05 4007973 (Oct. 27, 2006, *Pinkus, J.*); *Carlson* v. *Fire District Committee*, Superior Court, judicial district of Waterbury, Docket No. CV 99 0254545 (February 5, 2002, *Moraghan, J.T.R.*) (31 Conn. L. Rptr. 355, 357) ("The notice provisions of that section apply only to the

initial public hearing and do not apply to the continuation thereof."). This court agrees and moreover notes that such an argument would make compliance with § 8-7d (a) practically impossible in situations where a public hearing could not be completed in one evening.[4] Finally, this court recognizes that it should defer to the Board's interpretation. *Newman* v. *Planning & Zoning Commission,* 293 Conn. 209, 214, 976 A.2d 698 (2009) ("although this court is not bound by a zoning board's interpretation of its regulations, a board's reasonable, time-tested interpretation is given great weight"). This court finds that the Board's notice was proper and accordingly rejects Ahuja's argument that it lacked jurisdiction.

B.

Ahuja next claims that the notice that was published was misleading because just before the last hearing, Procurement altered its application. Specifically, Procurement eliminated the entrance/exit to Bradley Place thereby reducing the total

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[4] For instance, § 8-7d (a) states, in part, that "such hearing shall commence within sixty-five days after receipt of such petition, application, request or appeal and shall be completed within thirty-five days after such hearing commences, unless a shorter period of time is required under this chapter, chapter 126, chapter 440 or chapter 446i. . . . All decisions on such matters shall be rendered not later than sixty-five days after completion of such hearing, unless a shorter period of time is required under this chapter, chapter 126, chapter 440 or chapter 446i. The petitioner or applicant may consent to one or more extensions of any period specified in this subsection, provided the total extension of all such periods shall not be for longer than sixty-five days . . . ." Under Ahuja's interpretation, compliance with this section would be next to impossible.

number of entrances/exits from three to two and changing the entrance to Maplewood Place and the exit to High Ridge Road. Also, Procurement reduced the number of dwelling units from 22 to 17 and reduced the number of spaces in the day care center from 120 to 90 children in an effort to, as claimed by Ahuja in her brief, "appease its neighbors." She claims that in light of these last minute changes, the notice, which referenced the prior plans, was misleading because no member of the public could have prepared for the hearing.[5] Of course, she also claims that due to the last minute change, the Board did not have the ability to review the proposal. Additionally and really another part of this claim is that because these changes were significant and thus materially altered the proposal, the Board should have published a new notice. Ahuja cites *Urbanowicz* v. *Planning & Zoning Commission*, Superior Court, judicial district of New Britain, Docket No. CV 98 049225 (Nov. 21, 2000, *Cohn, J.*) (29 Conn. L. Rptr. 71), in which the court held that a last minute change to an application by adding an additional parcel required a new notice. Judge Cohn held that "[w]hen the notice required, however, is constructive notice to the general public

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[5] The plaintiff admits that she did not attend any of the public hearings; her son appeared on her behalf. June 1, 2012 deposition transcript of Gurpreet Ahuja, pp 78; 85. See *Danseyar* v. *Zoning Board of Appeals*, 164 Conn. 325, 330, 321 A.2d 474 (1973) ("Besides, the plaintiff, a proponent of the petition, has failed to show how he was prejudiced, since he and his attorney were in attendance at the hearing and were fully heard.").

by means of legal advertisement, failure to issue such notice properly is a defect implicating subject matter jurisdiction. . . . Strict compliance with statutory mandates regarding notice to the public is necessary because in the absence of newspaper publication, unknown individuals with an interest in zoning matters would have no way of learning what zoning decisions were being contemplated." (Internal quotation marks omitted.) Id., 74.

"The purpose behind the notice requirement . . . is fairly and sufficiently to apprise those who may be affected by the proposed action of the nature and character of the proposed action so as to enable them to prepare intelligently for the hearing. There is no requirement that the published notice describe the proposed action in detail or with exactitude." *Nazarko* v. *Zoning Commission*, 50 Conn. App. 517, 519, 717 A.2d 853, cert. denied, 247 Conn. 941, 723 A.2d 318 (1998) (notice was misleading where it only referenced lot 10, without referring to lot 9, when application sought special exception to improve driveway over both lots). In the present matter, Procurement revised its application, during the process, to respond to comments and concerns of the public. As noted by Procurement in its brief, no other person or entity submitted any traffic study, and the Traffic Engineer found there would be no adverse impacts resulting from the amendment. Brief, p.14; ROR, 12. There is certainly no claim that the published notices did not specify the property being considered, the basic action to be taken, or the location or the time of the

hearing. The September notice makes no mention of the specific numbers of entrances or exits - it merely says "with associated site improvements including driveways . . . ." ROR, 14. The plans were clearly altered, but the substance did not change; traffic patterns would be directed to Maplewood rather than Bradley Place. (ROR, 49; 50, pp. 23-30) ("So my point is that Maplewood can handle this traffic that we are shifting from Bradley to Maplewood. And in doing so, we are not changing the level of service. So in terms of impact, is there an increased delay? Sure there is. Is it measurable, the level of service C to D? No. D to E? No, it stays at level of service C so we are adding some delay there and maybe a couple of cars sitting when they turn left, but we are not changing the level of service. So that's a benefit of addressing these issues of Bradley and putting this traffic over here onto Maple without causing a problem for Maplewood, okay." [Id., p. 27]). The Board members discussed their concerns with Procurement's traffic engineer, Joe Balkus, and there is nothing in the record to indicate that any of their questions were not fully answered. Simply put, not only are mid-hearing changes not unusual, they are in fact commonplace. In *Neuger* v. *Zoning Board*, 145 Conn. 625, 630, 145 A.2d 738 (1958), the court, in considering a change in a proposed zoning regulation definition for a shopping center stated that "the notice of the public hearing clearly set forth that the hearing was called to consider an amendment of the zoning regulations which would add to them a definition of a shopping center . . . . The changes in the

language of the amendment as a result of the views expressed at the hearing did not affect the sufficiency of the notice or the validity of the hearing. The very purpose of the hearing was to afford an opportunity to interested parties to make known their views and to enable the board to be guided by them. It is implicit in such a procedure that changes in the original proposal may ensue as a result of the views expressed at the hearing. . . . Notice of a hearing is not required to contain an accurate forecast of the precise action which will be taken upon the subject matter referred to in the notice." (Citations omitted.) See also *Mohican Valley Concrete Corp.* v. *Zoning Board of Appeals*, 75 Conn. App. 45, 53, 815 A.2d 145 (2003) ("A notice is not misleading even though it does not describe the proposed action in detail or with exactitude." [Internal quotation marks omitted.]) There is nothing about the modifications which deprived the Board of jurisdiction to consider the applications. Indeed, to punish the applicant for its efforts to respond to stated concerns and reduce the size of its development by requiring the commencement of a new hearing process would be most unjust. The decision of the Board is affirmed. General Statutes § 8-8 (l).

Berger

Berger, J.